

Exhibit B

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
-----x

3 UNITED STATES OF AMERICA,

4 v.

24 Cr. 418 (MMG)

5 SHYMELL EPHRON,

6 Defendant.

Trial

7 -----x
8
9 New York, N.Y.
April 11, 2025
10 11:49 a.m.
12
13 Before:
14 HON. MARGARET M. GARNETT,
15 District Judge
16 APPEARANCES
17
18 MATTHEW PODOLSKY
19 Acting United States Attorney for the
20 Southern District of New York
21 BY: RYAN ALLISON
ANDREW JONES
LISA DANIELS
Assistant United States Attorneys
22
23 FEDERAL DEFENDERS OF NEW YORK
24 Attorneys for Defendant
25 BY: HANNAH McCREA
AMY GALLICCHIO
MICHAEL ARTHUS

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1 MR. JONES: The check one and move on doesn't solve
2 any problem. So we don't think that that's useful.

3 I will note, I just caught the Count Two, I think the
4 special verdict form just copied over from Count One, but it's
5 different. I mean, I guess it doesn't matter, I'm asking for
6 it to come out, but if it doesn't, it's first degree rape, not
7 third degree rape.

8 THE COURT: Oh, I see.

9 MR. JONES: Hopefully, that doesn't matter at all.

10 THE COURT: I will take all of that under advisement
11 and let you know Monday morning.

12 Anything else, Mr. Arthus, that you want to raise on
13 the verdict form?

14 MR. ARTHUS: Did we cover -- this may have already
15 been captured in Count Two on the special interrogatories
16 should I guess be omitted if the government --

17 THE COURT: Yes. If we do a special verdict form,
18 we'll have to fix all of it for Count Two because it's the
19 wrong -- we've just duped over the underlying issues from Count
20 One, and they're slightly different, so we will fix it if we do
21 it at all.

22 And on the Counts Three through Seven, any issue?

23 MR. ARTHUS: Not from us, no, your Honor.

24 MR. JONES: No, your Honor.

25 THE COURT: Okay. Let's talk about Dr. Rocchio.

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1 So I have reviewed your letters, and just so we can
2 focus our time, I don't agree with the defense argument that
3 this requires some opening of the Daubert hearings on another
4 round of briefing and all of that. The issues related to the
5 inapplicability of where the defense's view that studies or
6 treatment or literature on prepubescent children is not
7 relevant to this case or that there's issues that differentiate
8 them, all of that was fully fleshed out in the original Daubert
9 briefing, and in part led to my ruling that I thought many of
10 the proffered topics on which Dr. Rocchio was originally
11 proposed to testify were not a good fit for this case.

12 And no reason to doubt her expertise, but rather that
13 there was, you know, as with the last part of the Daubert
14 inquiry, there was a lack of fit that I did not think the
15 testimony on many of those topics would be helpful to the jury
16 to decide the issues in this case.

17 So I think your record is made, Mr. Arthus, but I just
18 don't want to spend time on that. I think -- I don't agree,
19 and I think we can resolve the issue one way or the other based
20 on the extensive briefing and discussion that we've had, both
21 at the time of the original Daubert motions and then the issues
22 that we've discussed throughout the case as this issue has sort
23 of re-arisen.

24 I want to give you all a chance to speak, but I guess
25 what I am envisioning, if I were to allow it, is that

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1 essentially the government after eliciting Dr. Rocchio's
2 qualifications would elicit from her as to -- and let me
3 just -- I don't think that this concept of disclosure is best
4 understood as a process that occurs over time. That seems to
5 me to fall on the wrong -- on the wrong side of the narrow
6 grounds on which I'm open to hearing argument about
7 Dr. Rocchio.

8 And what I would envision is a fairly tightly cabined
9 direct testimony that goes directly to the issue of essentially
10 how come and is it based on studies, the literature and her own
11 experience of treating patients for victims to not go to law
12 enforcement, to not go right away, to not disclose any kind of
13 sexual victimization. Broadly, you know, that sort of the
14 patterns that she believes are documented in the literature and
15 in her own practice of treating victims of some kind of --
16 victims of some kind of sexual victimization, again, limited to
17 adolescents and adults, to not make these various kinds of
18 disclosures or not do so right away.

19 And then her testimony as to, again, based on academic
20 studies and her own treatment experience, to describe some of
21 the reasons why disclosure or the seeking of help or
22 intervention is either not sought or not sought right away.
23 And as to those topics, I think they have squarely been put at
24 issue in the case. They wouldn't be impracticable strain based
25 on the Supreme Court's decision in *Diaz*, again, provided

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1 they're cabined to like, okay, is this a common thing? What is
2 the parameters of its commonality? And what are some of the
3 reasons based on the literature and her own practice why that
4 occurs?

5 Limited in that way, I think there is ample cross. I
6 mean, I could write the cross myself. You don't need my help,
7 but some of the topics of cross that I would be anticipating or
8 envisioning would be essentially cross about different kinds of
9 situations, right? That a teenager who believes she's in a
10 romantic relationship with an adult teacher at her school,
11 that's a different situation from, for example, you're out
12 jogging -- you know, the situation that our juror, Mr. Barry,
13 has described to us: You're out for a jog and a stranger drags
14 you into the bushes and forcibly rapes you, which is also
15 different from the context of where a teenager might meet an
16 adult in a social situation and wish to pursue a romantic
17 relationship with them and believe that it's an appropriate and
18 mutual romantic relationship. That all of these situations are
19 different and elicit from her, you know, if you wish, how they
20 are different.

21 I'm not cabining any cross if she testifies. I'm just
22 making a record about what I think could be fertile ground and
23 that any such testimony could be well tested on cross.
24 Eliciting from her that some victims or even many victims do
25 disclose, do report, do seek help, do seek medical attention,

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1 and laying out the contours of that and how, you know, the full
2 range of reactions and type and timing of disclosure are ones
3 that I presume she would say, oh yes, that does happen. As
4 well as eliciting from her that, you know, she has no idea
5 without treating the person, meeting the person, evaluating
6 their circumstances, why any particular person would or would
7 not do any of the things that, you know, have already been
8 elicited from her.

9 And so, you know, my concern - and then I want to hear
10 from you all - is I'm certainly sensitive to the issue that the
11 defense raised in their original Daubert motions, that we
12 discussed at the Daubert hearing, not at a testimony hearing,
13 but, you know, our oral argument on the Daubert issue and that
14 we've discussed throughout this trial; that expert testimony
15 not be substituted for the actual testimony of available
16 witnesses.

17 However, in thinking about the case, and as I
18 mentioned yesterday, my concern is that I personally think
19 based on my own life experience that it's quite likely that our
20 jurors who are young women in their twenties, many of them,
21 that's a subset of our jurors, have had life experiences that
22 would allow them to evaluate the reasons why a young woman
23 might not leave a dangerous situation because she feels
24 responsible for her friend or the reasons why a young woman who
25 is sexually assaulted might not go to the police, might not

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1 tell their parents, might not tell anyone.

2 Likewise, I personally think that our female jurors
3 who are of a significantly older generation, of which we have
4 several - I think three off the top of my head - female jurors
5 who are in their sixties, seventies, eighties might well be
6 thinking, let me tell you how it was in the Sixties. A boy
7 could pin you down in his car and rape you and you did nothing.
8 You went home, you took a bath, you went to sleep, you never
9 told anyone because no one would believe you.

10 But I'm not sure that -- that's sort of my personal
11 belief that we have plenty of jurors who have sufficient life
12 experience to evaluate and weigh the testimony that they've
13 heard in this case. My concern is (A) I'm not sure that's
14 correct, and I don't want to import my own milieu and life
15 experience and perception of the jurors to unduly influence the
16 relevance of this testimony.

17 And, second, I'm not sure anyone would want the
18 defense or the government to set up a scenario where in the
19 jury room jurors are not just doing what I'm going to tell them
20 to do, which is to bring their common sense and life experience
21 to evaluating things, but bringing events in their own lives
22 that they know about into the jury room in a way that I think
23 in the way that I've described might go beyond what is
24 appropriate in terms of jurors using their common sense and
25 judgment and general life experience to evaluate the witnesses

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1 and to deliberate together about what they think.

2 And so all of that thinking is kind of animating my
3 invitation to hear again from you all, and my view that, at
4 least right now, not having heard from you all orally, that
5 narrowed in the way that I've described, tested by
6 cross-examination, that we are then putting something in the
7 record that has happened in open court and is testified
8 cross-examination that the jurors can, if not rely on, draw on
9 if they choose, both the direct and cross, to have some --
10 something, something meatier and something that is actually
11 evidence in this trial that they can use to evaluate something
12 that I think both sides would agree is a central issue in the
13 case, which is what to make of the victim's testimony and the
14 underlying conduct about which they testified.

15 So all of that is to sort of frame my own thinking
16 about the issue. And with that, I don't know, Ms. Daniels
17 Mr. Jones, Mr. Allison.

18 MR. ALLISON: It's me, your Honor.

19 THE COURT: Okay.

20 MR. ALLISON: I don't have much more to add beyond
21 what you said. We're happy to limit it the way you described.
22 I do think it's important, but, I think, like a lot of people,
23 might hope that folks can think about sexual abuse victims in
24 the way that you anticipate some of the jurors may be able to,
25 but I don't think we should assume that people are thinking

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1 about it that way. And I do think that a lot of the conduct
2 that we all sort of know this -- a lot of conduct for sexual
3 abuse victims --

4 THE COURT: You have to keep your voice up. I can
5 hear you fine, but knowing 906 as I do, I'm confident that
6 defense counsel is struggling a little bit to hear you.

7 MR. ALLISON: Just that some of the conduct is
8 counterintuitive for sexual abuse victims. It's not within the
9 ken of many of the average jurors, and I don't think we can
10 sort of assume that they know that people who are sexually
11 abused don't often make reports immediately.

12 I think it is also important, as your Honor noted, not
13 to give any one juror undue influence over the rest of the
14 jurors based on their own life experience, and this will
15 essentially even it out. And it will even it out in whatever
16 way it comes out. You know, perhaps cross-examination shows
17 that, you know, what Evelyn did undermines her credibility.
18 Perhaps it will show that it doesn't. But the point is that
19 everybody will be acting from the same set of information,
20 tested by cross-examination in open court. We do think that's
21 appropriate.

22 Look, the defense is counting on the counterintuitive
23 nature of the conduct, right? That's one of their central
24 credibility attacks on Evelyn - the counterintuitive nature of
25 how she responded when being abused. And we're just trying to

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1 put forward some evidence to rebut that. It's directly
2 responsive. We think it's appropriate and the cabined way that
3 you discussed it, short direct examination, and we think it's
4 appropriate for the reasons that you said.

5 THE COURT: Mr. Arthus?

6 MR. ARTHUS: So, first, just about the jurors
7 themselves -- and also, I just want to, you know, I forgot
8 something on the charge, so we are going to have to go back to
9 the charge at some point, but stick with this for now sorry.

10 THE COURT: Just so everyone knows. I have a PI
11 hearing which is supposed to start at 1:30. I'm obviously
12 going to be a little bit late for that. I mention that not to
13 limit your ability to make a full record. And, Mr. Arthus,
14 tell me everything you want to tell me before I make a final
15 decision, but only so that you understand that I have a little
16 bit of a time constraint.

17 MR. ARTHUS: I think most of our positions are in our
18 letter.

19 On the jurors' life experience, we heard from almost
20 every juror in the back in that jury pool. And of the jurors
21 that we have, the young and old, I think a majority of them not
22 only disclosed stories in response to certain questions, but
23 stories that involved delayed disclosure. So these jurors have
24 an understanding of this.

25 THE COURT: I don't want to -- I don't mean to

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1 interrupt you, Mr. Arthus, but I do think it's worth clarifying
2 that I don't think that's correct, because all of the jurors --
3 we heard from so many jurors, so I don't dispute that. But of
4 the jurors who actually ended up on our jury pool, as to the
5 sexual questions, almost none of the jurors that are actually
6 on our jury had issues. So just by -- I don't have my jury
7 board in front of me, but I remember it quite well. So
8 obviously Mr. Barry, but Jurors 1 and 2 we did not speak to in
9 the back.

10 MR. ARTHUS: I'm trying to remember.

11 THE COURT: Mr. Lefever, the IT guy; Ms. Eagle, who
12 works in Bronx family court; and then we have Mr. Barry.
13 Everyone has Mr. Barry.

14 MR. ALLISON: Julian Rivera is next. We did not speak
15 to him in the back.

16 THE COURT: Right, we didn't speak to him in the back.

17 MR. ARTHUS: Ashley Rodriguez.

18 THE COURT: We did speak to her, yes.

19 MR. ARTHUS: Did discuss a disclosure.

20 THE COURT: The last juror in the front row.

21 MR. ARTHUS: I think that's Olivia Nash.

22 THE COURT: Right, Olivia Nash, we did not speak to
23 her in the back. We have a number of jurors in the second row
24 we didn't speak to. The only juror I can remember in the
25 second row that we spoke to in the back about the sexual

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1 questions --

2 MR. ARTHUS: There were two. So there was Kathie
3 Gordon.

4 THE COURT: Yes, Kathie Gordon, I remember her. And
5 Sarah Garrison.

6 MR. ARTHUS: Both of whom involved delayed disclosure
7 as well.

8 THE COURT: Yes. But, if anything, I think this
9 recitation is kind of illustrating my point, which in any jury,
10 it's not that every juror will have some personal appearance to
11 draw on, but this little exercise kind of highlights what is
12 giving me pause, right, that in terms of not importing my own
13 views as to what I think is the typical knowledge of women of
14 any age, and some men too, of course - I don't mean to limit it
15 either as victims or knowledge of victims only to women - but
16 we all, I mean, it's a truth in the world that women are much
17 more likely to be victims of sexual crimes.

18 And I think in fact the jury that we actually have
19 kind of illustrates a basis for my concern; that there may
20 be -- it just illustrates a basis for my concern that I don't
21 know, and I don't want to overly weight my own sense of what is
22 in the common knowledge and experience of jurors, because I'm
23 not sure an actual jury supports that based on what they
24 disclosed, which is just all we can go on, and that we would
25 all be better served by having jurors operate off a common set

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1 of -- a common pool of testimony, whether they reject -- I
2 mean, again, as I've said, I think there would be ample cross
3 for such a witness and that you would -- both sides would have
4 arguments to be made in closing about whether Dr. Rocchio's
5 testimony illuminated or did not illuminate something about
6 this case.

7 MR. ARTHUS: I think I can get to the heart of our
8 concern probably --

9 THE COURT: Again, I'm not trying to cut you off. I
10 think we should all operate off the same set of facts.

11 MR. ARTHUS: Yes. There is a heart of our concerns,
12 which is, first the proposed testimony would involve
13 Dr. Rocchio saying things like: Individuals often fear they
14 will get in trouble, fear that others will blame or judge them,
15 fear, shame, guilt, self-blame, confusion.

16 Evelyn testified to none of those things, and there's
17 a concern that if that is introduced into this trial, the jury
18 may go into the back and start asking themselves, well, Evelyn
19 didn't testify to those things, but maybe that's what she was
20 experiencing. And there is no effective way for us to
21 cross-examine Dr. Rocchio about that.

22 And the reason is this: I can't good ask those
23 questions that the Court posed because I don't know what the
24 answers are. Dr. Rocchio falls back -- and I've read through
25 all of her prior testimony. She falls back on the literature

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1 she's reviewed, her interviews with patients. And, I mean -- I
2 don't mean this disrespectfully. I just mean this in looking
3 at her expert testimony, I think I found one instance where she
4 actually answered yes or no. Like it's sort of like the Al
5 Hernandez; everything goes in a paragraph. I can't ask her are
6 there situations where a teenager might be in a romantic
7 situation. Her answer to that may very well be extraordinarily
8 damaging to us. And it would be borderline malpractice for me
9 to ask that question on cross not knowing what the answer is
10 because I have not had exposure to the full range of literature
11 that she's read or patients that she's interviewed. I can't
12 ask her that because I don't know what the answer is.

13 So the only way I can challenge it is basically
14 challenging she's getting paid a lot of money and hasn't met
15 the victims here, the alleged victims here, and that's not
16 going to be that effective with the jury, because the jury is
17 going to go back and they're going to say a psychologist
18 testified to all these phenomena that a lot of other children
19 had, and maybe Evelyn has those too, but that's not what Evelyn
20 said. Evelyn said I didn't tell because I wanted to protect my
21 friend, I don't trust the police, and I was waiting basically
22 for my mom to ask and to tell her. This is barely even a
23 delayed disclosure in the case. It's delayed disclosure in the
24 sense that she didn't make an immediate report; that she said
25 she told Violet the day they got out of Mr. Ephron's apartment.

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1 THE COURT: Right, but much of the extensive portions
2 of the cross -- which is no criticism; you're doing an
3 excellent job Ms. Gallicchio -- were about the many
4 opportunities that Evelyn would have had to get help from law
5 enforcement if she had sought to do so during the time that she
6 was at Mr. Ephron's apartment, and she did testify a couple of
7 times to like "I felt trapped. I didn't know what else to do.
8 I thought of things to do, and I sort of tried to do them but
9 they didn't work out." Or at one point I think she said, you
10 know, as to like the last occasion of a forcible rape
11 allegation that -- I'm sorry, sir. Are you here for the tennis
12 hearing? It's going to be in 110. We are obviously going to
13 be starting a little bit late, but it's going to be in 110.
14 You're welcome to stay here, but you had a tennis hearing look
15 about you, so I thought I would help you out. Okay. Thank
16 you.

17 Likewise, sir. Are you here for the tennis hearing?

18 UNIDENTIFIED PERSON: No, I was just auditing.

19 THE COURT: You're welcome to stay. I have another
20 matter in a different courtroom that I expect a lot of
21 reporters you're welcome to stay. It's only that I want to
22 make sure that people who are interested in the tennis hearing
23 are in the right place. Okay.

24 (Off the record)

25 THE COURT: I think on the last instance, she -- after

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1 they left the precinct and went back with Mr. Ephron to his
2 apartment, she said something like, "Well, at that point I had
3 given up, and I guess I just thought this is going to happen no
4 matter what."

5 MR. ARTHUS: Yeah.

6 THE COURT: "And there's nothing I can do about it."
7 So I'm not sure -- I raise those things because I'm not sure I
8 agree that there isn't testimonial evidence of sort of a range
9 of influences, motivations, and all of that. And I recognize
10 that your argument is, fine, she testified to those things. A
11 jury can evaluate it and decide whether they agree or not. But
12 I think it doesn't really solve for me this core issue is that
13 I think it is a truth in the world that it is extraordinarily
14 common for victims of sexual crimes to not go to the police, to
15 not tell even their closest family and friends about what
16 happened, and that that is factual information that is
17 relevant -- I mean, if the parties want to work out a
18 stipulation to that as a fact, I will entertain it. I'm not
19 sure the government would agree, but, at bottom, I just can't
20 get past or I have an abiding concern about the fact that that
21 is a fact in the world, and I remain uncertain about the extent
22 to which it is a fact that is in the common knowledge of jurors
23 in the way that like it is common knowledge that, you know,
24 people might be willing to lie about someone to get a benefit
25 for themselves or many of the other types of situations that I

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1 think courts have pretty consistently held. Like, yes, make
2 your arguments. Everyone can understand why someone would lie
3 to get a benefit for themselves, just as one example.

4 But I think this fact, which I don't think the defense
5 is really disputing, I'm not sure that -- I remain unsure as to
6 whether my sense that I know that to be true is truly common
7 knowledge. I really have serious concern about that. And a
8 serious concern that because that knowable fact is not part of
9 this record might be something that the jurors have wildly
10 different experiences of or views about that without some
11 evidence about that and your ability to test it through
12 cross-examination, and I don't agree that you -- what could I
13 possibly ask her? It's too risky. I reject that. I'll write
14 the cross-examination for you and give it to you. I know you
15 don't want me to. I'm just -- for the record, I'm just being a
16 little bit flip about that. But I will -- just step aside,
17 Mr. Arthus, I'll do it myself.

18 I do think that there is fertile cross that you can do
19 without eliciting answers that are unduly prejudicial to your
20 client. And that even a three-question cross might be
21 extraordinarily effective in getting the information that you
22 would want so that you can tell the jury: "Whatever
23 Dr. Rocchio told you, it doesn't help you at all to decide this
24 case."

25 I'm not saying I think that's true, but I think it is

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1 certainly possible to develop through cross-examination the
2 ability to make that argument. But I don't see another way
3 that a knowable fact, which I think is highly relevant to both
4 parties, both sets of lawyers' views of this case, to have it
5 happen in open court and allow the jurors to then accept it,
6 reject it, decide, okay, that's a fact, but that doesn't
7 help -- you know, I don't -- I, nonetheless, am weighing that
8 fact and coming to my own assessment of these facts here and
9 the witness's credibility and all of that.

10 And so I -- I guess it would be helpful to me,
11 Mr. Arthus, to understand what your answer is to that.

12 MR. ARTHUS: Yes. And I think that really gets to the
13 heart of the matter for us, which is we're not in any way
14 asserting nor are we going to assert to the jury that delayed
15 disclosure does not exist; that people wait to delay. We're
16 not going to make that argument. What the heart of the matter
17 here for us is, is that our argument is that the reasons Evelyn
18 provided, they're not counterintuitive. A juror will
19 understand when someone who -- if they've credited Evelyn's
20 testimony, someone felt that they were held captive, couldn't
21 escape, would not feel the ability to call the police. A juror
22 will understand that someone with Evelyn's background with the
23 way that she behaved when the police showed up, may not trust
24 the police to tell them that. They will understand that.

25 If Dr. Rocchio comes in and starts proposing -- I

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1 think this is the what we're most concerns about. If she comes
2 in and starts proposing alternative probable explanations that
3 Evelyn did not give, that's where we start to worry that that
4 is put in the jury's mind. I don't think it's the matter of
5 Dr. Rocchio coming in and saying sometimes people don't
6 disclose. I don't think we would contest that fact. It's the
7 alternative explanation she would provide, which are things
8 like same, self-blame. Maybe there were things Evelyn
9 experienced but she didn't testify to them. They both would be
10 alternative explanations and they would be prejudicial
11 explanations because they could engender sympathy in a way that
12 is just being injected by an expert here. That is the heart of
13 our concern is the alternative explanations that could be
14 offered; that particular portion of Dr. Rocchio's testimony.

15 If it was just she got up there and testified: A lot
16 of teenagers don't report it, I don't think I would even
17 cross-examine her on that because that's clearly true. It's
18 the alternatives.

19 THE COURT: Mr. Allison.

20 MR. ALLISON: Thank you, your Honor.

21 Dr. Rocchio just getting up there and saying a lot of
22 teenagers don't report is not enough substance for the jury to
23 understand the nature of her opinions and what she's saying. I
24 simply don't agree with Mr. Arthus that Evelyn didn't provide
25 explanations that are consistent with what Dr. Rocchio is

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1 talking about. For example, Evelyn said that she didn't tell
2 her mother until after she stopped eating and stopped drinking,
3 and her mother noticed it and then asked her about it, which is
4 consistent with feeling shame and embarrassment about what
5 happened.

6 You know, she described concerns about being believed
7 by Violet and others if she were to say what Shy was doing to
8 her in the moment. So she did describe those feelings. And to
9 the extent that Mr. Arthus thinks that, you know, Evelyn's
10 descriptions of her reasons for not providing disclosure don't
11 map on to exactly or don't map on to what Dr. Rocchio is
12 saying, then go ahead in closing argument and say Evelyn didn't
13 say any of that. That wasn't any of the reason for her failing
14 to disclose. She's really failing to disclose because she was
15 lying or whatever.

16 But it's not the case that Evelyn didn't say anything
17 that's consistent with what Dr. Rocchio would say are reasons
18 for failing to provide disclosure. The issue is teed up by the
19 defense, as you noted, and Dr. Rocchio needs to be able to
20 provide some substance to explain this phenomenon to late
21 disclosure so the jury can properly understand what she's
22 talking about.

23 THE COURT: Okay. I am going to allow the testimony
24 for all the reasons that I have described today and described
25 originally in reserving on this issue. I want to be absolutely

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1 clear that the testimony has to be limited in the ways that
2 I've set out today.

3 The other issue that I reserved on at the time of the
4 original Daubert ruling about memory and the ways that trauma
5 or sexual assault can affect memory, I'm not going to allow
6 that. I don't think -- I don't have the same concerns that
7 I've described as to that issue and I don't think any expert
8 testimony on that would be helpful to the jury or to the
9 parties. So I do think it has to be tightly cabined in the way
10 that I've described today, and I'm certainly happy to police
11 that, and, you know, I will give you some latitude on cross,
12 Mr. Arthus, or whoever is going to do the cross, to elicit all
13 the things that I think are relevant under the Supreme Court's
14 ruling in *Diaz* that, you know, the fact that some people act --
15 some people who are in certain situations act in a certain way,
16 may or may not tell you anything about the actions of a
17 particular person and a particular factual circumstance, but I
18 do think that cabined in the way I've described, that that
19 testimony can be well and adequately tested by
20 cross-examination, and to put before the jury whatever
21 consideration or weight they want to give to it an issue that
22 has happened in open court, is tested by cross and allows
23 counsel for both sides to make whatever arguments in closing
24 that they think are appropriate for the jury both about the
25 weight they should give to Dr. Rocchio's testimony, if any, as

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1 well as how it does or does not bear on what the evidence and
2 testimony from the witnesses has been. But I just think on
3 balance that the limited testimony fits within Daubert, which
4 is to ensure that all parties -- you know, that the evidence
5 that anyone is asking the jury to rely on, inferences they're
6 asking them to draw based on what actually occurred in court
7 and not our own collective projections onto what might be
8 within a juror's common experience or life experience because,
9 as I've said, I'm troubled by not projecting my own life
10 experience and assuming that it is widely shared by the jurors.

11 So that's my ruling. I understand you have all your
12 objections preserved, Mr. Arthus.

13 MR. ARTHUS: So just so I know, it's basically the
14 last paragraph on page 8 and the statistical information,
15 that's what the testimony is limited to.

16 THE COURT: Well, I mean, I put it in my own words at
17 the outset of this discussion of the issue of, you know, how
18 common based on both the academic literature and her own
19 treatment experience is it for adolescent or adult victims of
20 sexual crimes to not go to law enforcement, not seek medical
21 attention, not tell a variety of important people in their
22 lives about the crime or not to do so right away. And then to
23 put, you know, some sort of the next concentric circle out from
24 that on what, based on academic literature and her own
25 experience, are some of the reasons or operative factors or

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1 reasons that exist among this population as to why they would
2 not seek help from law enforcement, medical attention, tell
3 their closest associates or family members or only do so after
4 some amount of delay.

5 I think those topics are included within the
6 government's prior disclosure, to be clear, but I -- rather
7 than identify it in the language of the government's
8 disclosure, I think it's more helpful and clear for me to say
9 these are the topics on which I -- that are encompassed within
10 the prior notice, but on which I believe my ruling permits her
11 to testify and nothing outside of that. Obviously you know
12 they'll have to elicit her experience and background for the
13 702 ruling, but her substantive testimony should be limited to
14 those topics.

15 Anything else we need to take up today?

16 MR. ARTHUS: Just the request to charge we'll put that
17 in writing so we don't eat up --

18 THE COURT: I'm sorry, as to which issue?

19 MR. ARTHUS: There was just a couple of things that we
20 omitted to ask to be added.

21 THE COURT: If it's quick, do you want to just tell me
22 now, Mr. Arthus, because I've kept the tennis people waiting.
23 They can wait another five to ten minutes.

24 MR. ARTHUS: We requested a charge on defendant's
25 statements in our requests to charge since those were